

Budget # _____

Refer # _____

City of Milpitas, California

BUDGET CHANGE FORM

5

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	100-2940	\$43,900	100-1004201	\$43,900
<input type="checkbox"/> Budget Transfer				

Explain the reason for the budget change:

The City of Milpitas will celebrate the 50th anniversary of incorporation on January 26, 2004. On August 5, 2003, the Council approved a project plan developed by the 50th Anniversary Committee to publish a historical book in commemoration of the 50th anniversary year. The Council also directed staff to return with a budget appropriation and consultant agreement for the work.

The book will be developed in collaboration with the Milpitas Post. The estimated project cost is \$43,900 which can be recouped through corporate sponsors and book sales. An outline of the project plan is included as attachment to the Council's agenda packet.

Approve a budget appropriation of \$43,900 from General Fund undesignated balance to the City Council's Community Promotion budget to fund the Historical Book project.

☒ Check if City Council Approval required.

Meeting Date: October 21, 2003

Itemization of funds, if needed:			Amount
Requested by:	Division Head: <i>Cynthia Maxwell</i>	Date:	10-15-03
	Department Head:	Date:	
Reviewed by:	Finance Director: <i>Jim C. Karl</i>	Date:	10/15/03
Approved by:	City Manager: <i>Thomas J. Wilson</i>	Date:	10-16-03
Date approved by City Council, if required:		Confirmed by:	

MEMORANDUM

Office of the City Manager



To: Honorable Mayor and City Council
Through: Blair King, Acting City Manager
From: Cindy Maxwell, Principal Analyst
Subject: **Milpitas Historical Book Project Plan**
Date: July 29, 2003

Background

At the July 1 meeting, the City Council considered a proposal from the 50th Anniversary Committee for the creation of a historical book in commemoration of the City's 50th anniversary in 2004. The *Milpitas Post* submitted a proposal to provide labor and production services for the project. The City Council indicated interest in the project and instructed staff to return with a project plan.

Book specifications

- Cover: Heavy stock, 4-color, perfect bound
- Size: "coffee table style" 11" x 8.5"
- Length: 100 pages + up to 20 sponsor pages
- Color: Matte finish, 4-color cover, 2-color pages
- Quantity: 1,000 copies

Services from *Milpitas Post*

- Organize and research.
- Write and edit text.
- Ad sales: Up to 20 full-page ads, placed in the last 20 pages, at \$1,200 each. Post reimbursed between \$9,000 to \$10,800 regardless number of ads sold.
- Design and layout graphics and text.
- Printing: Oversee production.
- Distribution: Promote in *Post*, coordinate sales at retail outlets.

Production Process

- City Council reviews book outline
- Staff, and Councilmember Polanski review administrative draft (text only).
- 50th Anniversary Committee & City Council review first Draft (text and design).
- Two additional drafts can be provided if needed.
- Printed and delivered before January 24, 2004.

Distribution

- Promote in *Milpitas Post* & City publications (i.e., Connection, web page).
- Sell at special events including January 24, 2004 Anniversary Party.
- Sell by consignment at bookstores and library.
- Use volunteers, local organizations, and/or 50th Anniversary Committee to help sell.

Budget

Expenses

Low End	High End	Expense
\$15,000	\$15,000	<i>Post</i> labor, promotion & production
\$ 9,000	\$10,800	<i>Post</i> advertising sales share
\$11,200	\$16,543	Printing
\$35,200	\$42,343	Total
\$35	\$42	Cost per book

Income

Low End	High End	Source
\$ 6,000	\$24,000	Advertising Sales*
\$18,000	\$18,000	1,000 book sales, \$18 each
\$24,000	\$42,000	Total
(\$11,200)	\$0	Difference

* Full page ads at \$1,200 each. Low end assumes 5 ads; high end assumes 20 ads.

Analysis

- The proposed consultant, the *Milpitas Post*, has significant resources and expertise to do research, obtain photos, write and edit text, complete book design and manage the printing process. They have an extensive photo library and will provide a primary writer with extensive experience in Milpitas.
- Assuming a minimum of 500 hours of work, the *Post's* labor and production cost of \$15,000 is a very reasonable \$30 per hour.
- Local history book publishers typically require customers to write the text and provide the photos with a substantial lead time for the publisher to complete layout, design and printing.
- The *Milpitas Post* is a local known vendor with a proven commitment to the community.
- The project has potential for full cost recovery with a unit sales price set at \$18.00.
- City Council commitment to the project is needed so the consultant can begin work and complete the project by early January.

Recommendation

Staff recommends the City Council approve this Project Plan and instruct staff to return with a consultant agreement and budget appropriation.

AGREEMENT
BETWEEN CITY OF MILPITAS
AND THE *MILPITAS POST*

THIS AGREEMENT is made by and between the CITY OF MILPITAS, a municipal corporation of the State of California, 455 East Calaveras Boulevard, Milpitas, California (hereinafter referred to as "CITY") and the *Milpitas Post* (hereinafter referred to as "CONTRACTOR") at Milpitas, California.

RECITALS

A CITY desires to have created and published a historical book recording and illustrating the history of Milpitas.

B. CONTRACTOR is well qualified to assist the City with this project and to perform a variety of needed services and is willing to provide the services in accordance with the terms and conditions of this Agreement.

IN CONSIDERATION of the mutual covenants and conditions herein contained, the parties agree as follows:

AGREEMENT

1. General

CITY engages CONTRACTOR to provide various services for the development and production of a historical book pursuant to the covenants and conditions of this Agreement, at the compensation herein stipulated, and CONTRACTOR accepts the engagement upon these terms.

2. Term

This Agreement shall become effective upon the execution of the Agreement by all parties. This Agreement shall end on February 28, 2004 unless otherwise terminated.

3. Scope of CONTRACTOR's Duties and Services

The scope of CONTRACTOR's duties and services is set out in Exhibit A, which is attached and incorporated by reference. These duties and services shall be completed according to the time schedule contained in Exhibit A.

4. Payment by CITY: Time and Manner of Payment

CITY shall pay CONTRACTOR for all services to be rendered by it and all materials to be furnished under this Agreement, the amount specifically set forth and in the manner specifically set forth on Exhibit B, which is attached and incorporated by reference. CONTRACTOR agrees to accept this sum as full compensation for all services due under this Agreement. CITY's representative shall be responsible for obtaining a purchase order from the CITY's Finance Department to encumber the funds for Agreement.

5. Additional Work

CITY may change the scope of the services required by this Agreement by adding or deleting tasks, and CONTRACTOR shall perform the services required under this Agreement as modified. The contract price shall be adjusted to reflect the changes in the scope of services. These changes shall be made in writing signed by both parties.

6. Equal Employment Opportunity

CONTRACTOR shall not discriminate against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, age, physical or mental disability, medical condition, marital status, or by illegal denial of family care leave.

7. Compliance with Laws

CONTRACTOR shall comply with all current federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative body or tribunal in any manner affecting the performance of the Agreement.

8. Independent Contractor

CONTRACTOR is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY.

9. Indemnity

To the fullest extent permitted by law, CONTRACTOR agrees to indemnify, defend with counsel reasonably acceptable to CITY, and hold harmless CITY, its officers and employees from all costs, expenses, claims, suits, judgments, demands, causes of action, losses, liabilities or damages arising out of or in any way connected with the intentional or negligent act or omission of the CONTRACTOR, CONTRACTOR's

officers, employees, agents, consultants, subconsultants or any officer, agent or employee thereof, including without limitation those relating to injury or death of any person or damage to any property.

10. Insurance

a. General Liability

CONTRACTOR agrees to maintain and pay for a general liability policy naming CITY, its officers, and employees as additional insured and insuring them against liability or financial loss resulting from injuries occurring to persons or property in or about or in connection with the work to be performed under this Agreement. Each policy of insurance shall provide primary coverage on an occurrence basis in a company satisfactory to CITY in the following minimal amounts: personal injury, \$1,000,000 for each person and \$1,000,000 per occurrence; property damage, \$500,000 per occurrence. Each policy shall provide that it shall not be canceled or reduced in coverage without 30 days prior written notice to CITY. The general liability policy shall provide (a) if CITY, its officers or employees have other insurance against loss covered by said policy, said other insurance shall be excess insurance only, and (b) that CITY, its officers and employees are not precluded from claim under said policy against other insured parties.

b. Worker's Compensation

CONTRACTOR agrees to comply with all State requirements relating to Worker's Compensation Insurance and to provide the same for its employees.

c. Automobile Liability

CONTRACTOR agrees to maintain and pay for an automobile liability policy naming CITY, its officers and employees as additional insured and insuring them against liability or financial loss resulting from injuries occurring to persons or property in connection with automobiles owned, leased, hired or borrowed by CONTRACTOR, its employees, or agents. Each policy shall maintain limits no less than \$300,000 per accident for bodily injury and property damage. Each policy shall provide that it shall not be canceled or reduced in coverage without 30 days prior written notice to CITY.

d. CONTRACTOR shall file Certificates and Endorsements of Insurance with CITY in a form satisfactory to CITY ATTORNEY upon execution of this Agreement, evidencing said coverage and the requirements of this

paragraph. The Certificates and Endorsement shall contain a reference to the date and title of this Agreement.

All of the insurance companies providing insurance for CONTRACTOR shall have an A.M. Best & Co. rating of A:VIII or above. The Certificates and Endorsements shall be mailed to:

Purchasing Agent
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

12. CITY Representative

Cynthia Maxwell, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement; all requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. CONTRACTORS Representative

Robert Devincenzi shall represent CONTRACTOR in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of CONTRACTOR pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONTRACTOR representative.

14. Notices

Unless otherwise provided herein, all notices required hereunder shall be given by United States registered or certified mail, or other form of mail which offers proof of mailing, postage prepaid and addressed to the party at the address below.

CITY: Thomas Wilson, City Manager, City of Milpitas, 455 E. Calaveras Blvd.,
Milpitas, CA 95035

CONTRACTOR: Robert Devincenzi, Milpitas Post, 59 Marylinn Drive,
Milpitas, CA 95035

15. Assignment

Neither party shall assign nor sublet any portion of this Agreement

without the written consent of the other party.

16. Applicable Laws and Attorneys' Fees

This Agreement shall be interpreted and enforced pursuant to California law. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in Santa Clara County, California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be affixed by the court.

17. Termination

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall also have the right to terminate this Agreement for any reason upon written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate, unless otherwise stated on Exhibit A.

18. Entire Agreement; Amendment

This writing constitutes the entire Agreement between the parties. No modification shall be effective unless the modification is in writing and signed by all parties to this Agreement.

20. Miscellaneous

All covenants herein shall be conditions. Time shall be of the essence. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. The singular number shall include the plural, and the masculine gender shall include the feminine gender and neuter gender whenever the context of this Agreement permits. This Agreement shall be deemed to have been drafted equally by both parties.

21. Additional Provisions, Exhibits

Additional provisions of this Agreement may be set forth on Exhibit B. All Exhibits are incorporated into the Agreement by reference.

Dated: _____

BY: _____
CONTRACTOR

Dated: _____

BY: _____
CITY MANAGER

ATTEST

APPROVED AS TO FORM

BY: _____
CITY CLERK

BY: _____
CITY ATTORNEY

Exhibit A

Scope of Services

Consultant will provide labor and production services to develop and publish a historical book about the City of Milpitas. These services will include the following:

Services from Consultant

- Organize and research.
- Write and edit text.
- Ad sales: Up to 20 full-page ads, placed in the last 20 pages, at \$1,200 each.
- Design and layout graphics and text.
- Printing: Supervise print services and maintain quality control.
- Distribution: Advertise in *Milpitas Post*, coordinate sales at retail outlets.
- The attached July 25, 2003 letter from Robert J. Devincenzi provides additional detail on services. In the event of a conflict between this Exhibit A and the July 25, 2003 letter, this Exhibit A shall control.

Production Process

- City Council reviews book outline
- Staff and a Councilmember review administrative draft (text only).
- 50th Anniversary Committee & City Council review first Draft (text and design).
- Two additional drafts can be provided if needed.
- Printed and delivered before January 24, 2004.

Book specifications

- Cover: Heavy stock, 4-color, perfect bound
- Size: "coffee table style" 11" x 8.5"
- Length: 100 pages + up to 20 sponsor pages
- Color: Matte finish, 4-color cover, 2-color pages
- Quantity: 1,000 copies

Exhibit B
Payment For Services

Contractor compensation will be a flat fee as follows:

Not To Exceed	Services
\$15,000.00	Labor and production
\$1,500.00	10 percent contingency
\$10,800.00	Advertising sales: Contractor will retain 45 percent of gross revenues received from advertising sales. Contractor is guaranteed a minimum payment of \$9,000 from advertising proceeds regardless of total advertising revenues.
\$27,300.00	Total

City will pay book printing and binding fees separately to printing contractor.